

Claim Rejections under § 103

The Examiner rejects Claims 1-6 & 8-18 under 35 USC § 103(a) as being unpatentable over Phillips in view of Frase. In particular, the Examiner states that Phillips teaches a work machine according to Applicants' claims. However, the Examiner states that Phillips does not teach using control levers that are normally biased to a neutral position with a first position for extending the respective stabilizer leg while the lever is manually held in the first position, a second position for retracting the respective stabilizer leg while the lever is manually held in the second position, and a retaining means for automatically retaining the lever in a third position for a predetermined period of time in order to retract the respective stabilizer leg to its fully retracted position. However, the Examiner states that Frase teaches that it is conventional to use a hydraulic control lever that is normally biased to a neutral position with a first position for extending a hydraulic cylinder while the lever is manually held, a second position for retracting the hydraulic cylinder while the lever is manually held, and a relay and timer connected to the control valve and operable therewith.

Further, the Examiner takes **official notice** that, in this sort of control valve, the control lever may be moved partially into the first or second positions, causing the slow or gradual actuation of the hydraulic cylinder. The Examiner also states that the control lever may be moved completely into the first or second positions & retained therein until the cylinder reaches a fully extended or retracted position. Additionally, the Examiner states that manual operation of the

control lever to the partially engaged position from the completely engaged position will disengage the automatic retraction or extension of the hydraulic cylinder and return the control to the manual operation. Further, the Examiner states, that this type of control valve may have some sort of detent mechanism for retaining the valve in the completely actuated position. The Examiner states that, additionally, multiple cylinders are often actuated by a single control lever, such as the GRESSEN 400 series hydraulic valve with optional three position detent mechanism.

Therefore, the Examiner states that it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a control lever of the type disclosed by Frase, on the work vehicle of Phillips because **it would allow the user to fully retract the member without having to manually hold the switch in the retract position.**

Although the Examiner has taken official notice that the Frase disclosure may include all the limitations of Applicants' independent Claims 1, 11 & 16, Frase does not teach or suggest such limitations⁷. As the Examiner is aware, the Federal Circuit in, *In re Evanega*, held that the mere absence [from the reference] of an explicit requirement of the claim cannot reasonably be construed as an affirmative statement that [the requirement is in the reference]. In Frase, the reference is merely disclosing a power actuating means to completely lower or raise the toolbars in order to achieve a working position or a roading position, respectively. However, the ability to move the control levers in a manner that achieves positioning of the stabilizer leg between the fully extended and fully retracted positions and the ability to

if turn switch
off during (2 way)
operation - plurality
of positions would be est.
- claims do not exclude this - inherent

levers do lock or retain position → when in retract position it satisfies this limitation
retain the control lever in the auto-retract position to automatically retract the stabilizer leg are missing from the Frase reference.] Additionally, there is no incentive in the Frase reference to have such features. This is true because only raised and lowered positions are necessary for a toolbar, such as that disclosed in Frase. Further, although the advantage of having various positions for the stabilizers is mentioned in the Phillips reference, the means to accomplish this function is not like that disclosed in Applicants' claimed invention. More importantly, using the control lever of Frase on the work vehicle of Phillips would NOT achieve the limitations as disclosed in Applicants' independent Claims 1,11 & 16 because [Frase does not teach or suggest any means to achieve the limitations] (and is without incentive to do so). Further, a review of Huffman, as well, does not find all the limitations as disclosed in Applicants' Claim 1,11 & 16.

For the reasons given, Applicants respectfully submit that the combination of the prior art references does not achieve the limitations, as disclosed in Applicants' independent Claims 1,11 & 16. Further, Applicants respectfully request that the rejection of Claims 1,11 & 16 under 35 USC § 103(a) should be withdrawn. Therefore, Applicants respectfully request allowance of Claims 1,11 & 16 over the prior art of record.

Further, Claims 2-6, 8-10, 12-15 and 17-18 are dependent, either directly or indirectly, on Claims 1,11 or 16 and include additional limitations therein. Therefore, Applicants respectfully request that the rejection of Claims 2-6, 8-10, 12-15 and 17-18 under 35 USC § 103(a) should also be withdrawn. Therefore, Applicants respectfully request

levers do lock or retain position → when in retract position it satisfies this limitation

not necessarily need different positions for diff. terrain - cannot only have 2 positions because terrain varies - argument always correct - lowered to coast height. taught by - Frase? - Yes

Yes it does, within scope of claims.

allowance of Claims 2-6, 8-10, 12-15 and 17-18 over the prior art of record.

The prior art of record has been reviewed and is believed to be inapplicable and not pertinent to the invention as claimed by the Applicants.

It is respectfully urged that the subject application is in condition for allowance and allowance of the claims in the application is respectfully requested.

Respectfully submitted,



Diana L. Charlton .
Patent Attorney II
Caterpillar Inc.
Registration No. 36,103

RECEIVED
FEB 20 2002
GROUP 3600

Telephone: (309) 675-5083
Facsimile: (309) 675-1236
T:DLC/Amendments/00-318A2.doc